

Laurence A. Weiss (Bar No. 164638)
 Laurence.Weiss@hellerehrman.com
 HELLER EHRMAN LLP
 275 Middlefield Road
 Menlo Park, CA 94025-3506
 Telephone: 650.324.7000
 Facsimile: 650.324.0638

David B. Weinberg (D.C. Bar # 186247)
 (Pending *pro hac vice*)
 dweinberg@wileyrein.com
 Eric Andreas (D.C. Bar # 462777)
 eandreas@wileyrein.com
 David E. Markert (D.C. Bar #502486)
 dmarkert@wileyrein.com
 WILEY REIN LLP
 1776 K Street NW
 Washington, DC 20006
 Telephone: 202.719.7000
 Facsimile: 202.719.7049

Attorneys for Intervenor-Defendant
 Makhteshim Agan of North America, Inc.

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

UNITED FARM WORKERS, et al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
 PROTECTION AGENCY,

Defendant.

Case No. C 08-03595 SBA

**[PROPOSED] ANSWER OF
 INTERVENOR-DEFENDANT
 MAKHTESHIM AGAN OF
 NORTH AMERICA, INC. TO
 FIRST AMENDED COMPLAINT**

Intervenor Makhteshim Agan of North America, Inc. (“MANA”) answers Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief (“Complaint”) as follows:

1. Paragraph 1 consists of Plaintiffs’ characterization of their claims in this lawsuit, the relief they seek, and conclusions of law, to which no response is required.

1
2 2. MANA admits that diazinon is an organophosphate. MANA also admits that
3 humans and wildlife can be exposed to diazinon during and following application, but denies that
4 contamination or negative health effects occur when its diazinon products are used in accordance
5 with label directions. MANA denies the remainder of the allegations in Paragraph 2.

6 3. Paragraph 3 consists of Plaintiffs' characterization of the United States
7 Environmental Protection Agency's ("EPA") decision to reregister diazinon, which speaks for
8 itself, and conclusions of law; thus no response is required.

9 4. Paragraph 4 consists of Plaintiffs' characterization of their claims in this lawsuit,
10 the relief they seek, and conclusions of law, to which no response is required.

11 5. MANA denies the first sentence in Paragraph 5 to the extent it is contradicted by
12 Plaintiffs' statement in Paragraph 33 that EPA has initiated consultation on the effects of diazinon
13 "on listed salmon and steelhead populations, the California red-legged frog, and the Barton
14 Springs salamander." MANA does admit that EPA has not initiated and completed consultation
15 on all listed or endangered species that might be impacted by its reregistration decision for
16 diazinon. The remainder of Paragraph 5 consists of Plaintiffs' characterization of their claims in
17 this lawsuit, the relief they seek, and conclusions of law, to which no response is required.

18 6. MANA denies the allegations in the first two sentences of Paragraph 6. MANA
19 admits the remaining allegations of Paragraph 6.

20 7. MANA is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations in Paragraph 7 and therefore denies them.

22 8. MANA is without knowledge or information sufficient to form a belief as to the
23 truth of the allegations in Paragraph 8 and therefore denies them.

24 9. MANA is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations in Paragraph 9 and therefore denies them.

26 10. MANA is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations in Paragraph 10 and therefore denies them.

28 11. MANA is without knowledge or information sufficient to form a belief as to the

1 truth of the allegations in Paragraph 11 and therefore denies them.

2 12. MANA denies the allegations in Paragraph 12.

3 13. MANA denies the allegations in Paragraph 13.

4 14. MANA admits that EPA is a federal agency. As to the remaining allegations in
5 Paragraph 14, the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and
6 Endangered Species Act ("ESA") speak for themselves; thus no response is required.

7 15. Paragraph 15 merely cites and summarizes FIFRA, which speaks for itself; thus no
8 response is required.

9 16. Paragraph 16 merely cites and summarizes FIFRA, which speaks for itself; thus no
10 response is required.

11 17. Paragraph 17 merely cites and summarizes FIFRA and the Federal Food, Drug,
12 and Cosmetic Act ("FFDCA"), which speak for themselves; thus no response is required.

13 18. Paragraph 18 merely cites and summarizes FIFRA, which speaks for itself; thus no
14 response is required.

15 19. Paragraph 19 merely cites and summarizes FIFRA, which speaks for itself; thus no
16 response is required.

17 20. MANA admits the first two sentences of Paragraph 20. MANA is without
18 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
19 Paragraph 20 and therefore denies them.

20 21. The first sentence of Paragraph 21 merely summarizes FIFRA and the FFDCA,
21 which speak for themselves; thus no response is required. MANA denies the second sentence of
22 Paragraph 21.

23 22. MANA admits the allegations in Paragraph 22.

24 23. Paragraph 23 consists of a conclusion of law to which no response is required.

25 24. MANA denies the allegation in the first sentence of Paragraph 24. The second
26 sentence of Paragraph 24 purports to characterize reports which speak for themselves; thus no
27 response is required. MANA denies the allegations in the third sentence of Paragraph 24.

28 25. Paragraph 25 merely cites and summarizes the ESA, which speaks for itself; thus

1 no response is required.

2 26. Paragraph 26 merely cites and summarizes the ESA and its implementing
3 regulations, which speak for themselves; thus no response is required.

4 27. Paragraph 27 merely cites and summarizes the ESA and its implementing
5 regulations, which speak for themselves; thus no response is required.

6 28. Paragraph 28 merely cites and summarizes the ESA, which speaks for itself; thus
7 no response is required.

8 29. Paragraph 29 merely cites and summarizes the ESA, which speaks for itself; thus
9 no response is required.

10 30. MANA admits that diazinon is an organophosphate insecticide and that some
11 organophosphates were developed during World War II, but denies that diazinon was developed
12 during World War II. MANA denies the remaining allegations of Paragraph 30.

13 31. With regard to the first and second sentences of Paragraph 31, MANA admits that
14 the domestic annual average use between 1987 and 1997 was approximately 13 million pounds,
15 but denies that the domestic annual average use of diazinon has continued at the same pace
16 following the cancellation of diazinon's residential uses in 2000. MANA admits the third
17 sentence of Paragraph 31.

18 32. The first, second, and third sentences of Paragraph 32 purport to cite and
19 summarize the July 2002 Interim Reregistration Eligibility Decision ("IRED") for diazinon,
20 which speaks for itself; thus no response is required. MANA is without knowledge or
21 information sufficient to form a belief as to the truth of the allegation in the fourth sentence of
22 Paragraph 32 and therefore denies it.

23 33. MANA admits the allegations in Paragraph 33.

24 34. With regard to the first sentence of Paragraph 34, MANA admits that a draft
25 biological opinion was released on July 31, 2008 concerning the effects of diazinon and two other
26 pesticides on salmon and steelhead. The remainder of Paragraph 34 merely cites and summarizes
27 the draft biological opinion, which speaks for itself; thus no response is required.

28 35. MANA admits that extreme exposures to organophosphates, including diazinon,

1 have been associated with some of the effects listed in the second and third sentences of
2 Paragraph 35, but deny that such exposures occur when its products are used in accordance with
3 label directions. The fourth sentence of Paragraph 35 purports to characterize scientific studies
4 which speak for themselves and are the best evidence of their contents.

5 36. With regard to the first, second, and third sentences of Paragraph 36, MANA
6 admits that extreme exposures to organophosphates, including diazinon, have been associated
7 with some of the effects listed, but deny that such effects occur when its products are used in
8 accordance with label directions. Also, regarding the allegations in the third sentence of
9 Paragraph 36, MANA admits that there are studies that purport to show that diazinon has
10 sublethal effects on certain fish at low concentrations, but denies that those studies are reliable.
11 The last sentence of Paragraph 36 merely cites and summarizes the July 31, 2008 draft biological
12 opinion, which speaks for itself; thus no response is required.

13 37. With regard to the first sentence of Paragraph 37, MANA admits that diazinon can
14 become airborne. MANA is without knowledge or information sufficient to form a belief as to
15 the truth of the allegations in the second sentence of Paragraph 37 and therefore denies them. The
16 last two sentences purport to characterize air monitoring studies which speak for themselves and
17 are the best evidence of their contents.

18 38. MANA denies the first sentence of Paragraph 38. The second and third sentences
19 merely cite and summarize the diazinon IRED and July 31, 2008 draft biological opinion, which
20 speak for themselves; thus no response is required. Regarding the last sentence in Paragraph 38,
21 MANA admits that waterbodies have been listed as impaired due to the detection of diazinon, but
22 denies that the listings were appropriate.

23 39. Paragraph 39 characterizes the diazinon IRED and 2004 revision to the IRED,
24 which speak for themselves; thus no response is required.

25 40. Paragraph 40 characterizes the diazinon IRED, which speaks for itself; thus no
26 response is required.

27 41. Paragraph 41 characterizes the diazinon IRED, which speaks for itself; thus no
28 response is required.

1
2 42. Paragraph 42 characterizes the diazinon IRED, which speaks for itself; thus no
3 response is required.

4 43. Paragraph 43 characterizes the diazinon IRED, which speaks for itself; thus no
5 response is required.

6 44. MANA denies the second sentence in Paragraph 44. The remainder of Paragraph
7 44 characterizes the diazinon IRED, which speaks for itself; thus no response is required.

8 45. Paragraph 45 characterizes the diazinon IRED and 2004 revision to the IRED,
9 which speak for themselves; thus no response is required.

10 46. MANA denies the allegations in Paragraph 46.

11 47. MANA denies the allegations in Paragraph 47.

12 48. MANA admits that the diazinon IRED was called "interim." The remainder of
13 Paragraph 48 characterizes the Food Quality Protection Act and the EPA Memorandum
14 Finalizing IREDs for Organophosphate Pesticides, July 31, 2006, which speak for themselves;
15 thus no response is required.

16 49. Paragraph 49 characterizes and quotes portions of FIFRA, which speaks for itself;
17 thus no response is required.

18 50. MANA denies the allegations in Paragraph 50.

19 51. MANA denies the allegations in Paragraph 51.

20 52. The first sentence of Paragraph 52 characterizes and quotes portions of FIFRA,
21 which speaks for itself; thus no response is required. The second and third sentences contain
22 conclusions of law to which no response is required.

23 53. The first and second sentences of Paragraph 53 purport to characterize the
24 diazinon IRED, which speaks for itself; thus no response is required. MANA denies the third
25 sentence in Paragraph 53.

26 54. Paragraph 54 characterizes and quotes portions of the ESA, which speaks for
27 itself; thus no response is required.

28 55. The first sentence of Paragraph 55 characterizes and quotes portions of the ESA

1 and its implementing regulations, which speak for themselves; thus no response is required. The
2 second sentence consists of a conclusion of law to which no response is required.

3 56. The first sentence of Paragraph 56 purports to characterize the diazinon IRED,
4 which speaks for itself; thus no response is required. The second, third, and fourth sentences of
5 Paragraph 56 consists of conclusions of law to which no response is required. MANA denies the
6 allegations in the last sentence of Paragraph 56.

7 **PRAYER FOR RELIEF**

8 MANA denies that Plaintiffs are entitled to the relief requested.

9 **GENERAL DENIAL**

10 Except as expressly admitted or otherwise stated herein, MANA denies each and every
11 allegation in Plaintiffs' Complaint.

12 **AFFIRMATIVE DEFENSES**

13 A. Plaintiffs have failed to state a claim upon which relief can be granted.

14 B. Plaintiffs lack standing to bring this case.

15 C. This Court lacks jurisdiction over the subject matter of this case.

16 D. Plaintiffs' claims are moot.

17 MANA reserves the right to add affirmative defenses as may be revealed during the
18 course of the litigation of this case.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 WHEREFORE, for these reasons, MANA requests that the Court deny Plaintiffs'
2 Complaint with prejudice, that MANA be awarded its costs in this action, and that the Court grant
3 such other and further relief as may be appropriate.

4
5 Respectfully submitted,

6
7 HELLER EHRMAN LLP

8
9 By: /s/

10 David B. Weinberg (D.C. Bar # 186247)
(Pending *pro hac vice*)

11 dweinberg@wileyrein.com

12 Eric Andreas (D.C. Bar # 462777)

13 eandreas@wileyrein.com

14 David E. Markert (D.C. Bar #502486)

15 dmarkert@wileyrein.com

16 WILEY REIN LLP

17 1776 K Street NW

18 Washington, DC 20006

19 Telephone: 202.719.7000

20 Facsimile: 202.719.7049

21 Laurence A. Weiss

22 Laurence.Weiss@hellerehrman.com

23 HELLER EHRMAN LLP

24 275 Middlefield Road

25 Menlo Park, CA 94025-3506

26 Telephone: 650.324.7000

27 Facsimile: 650.324.0638

28 DATED: August 20, 2008

Attorneys for Intervenor-Defendant
Makhteshim Agan of North America, Inc.